IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.78 OF 1998

1.M/s Ramji Lal Rajinder Prasad, a Partnership firm, registered under Partnership Act and having their office at 4066, Naya Bazar, Delhi - 110 006.

2. M/s National Insurance Company Limited a Body corporate subsidiary of General Insurance Corporation of India having their Registered Ofrfice at 3, Middleton Street, Calcutta - 700 071 and one of their Delhi C.O. No.XIX, Laxmi Tower, Nainiwala Bagh, Azadpur Commercial Complex, Delhi-110 033 and their Mumbai D.O. No.XII, at Sheel Chamber, 3rd floor, Cawasji Patel Street, Mumbai-400023.

.. Plaintiffs

vs

M/s Sany Shipping Pte Ltd
A foreign shipping Company,incorporated in SINGAPORE and having their Head Office at 101, Cecil Street, 24-09 Tang Eng Building SINGAPORE-069533 and carry on their business in Mumbai through their Agents M/s Galaxy Multimodel Systems Private Limited, Room No.20/21, Hansraj Damodar Trust Building, 2nd floor, 12/14,Goa Street, Ballard Estate, Mumbai-400 038.

.. Defendants

Mr.V.S.Amin for Plaintiffs

CORAM : A.S.OKA, J

DATED : 30th July, 2007

ORAL JUDGMENT

1. The suit is listed under the caption "undefended suits for ex parte decree". Learned counsel appearing for the plaintiff has tendered on record affidavit in lieu of examination-in-chief of Ms.Maithili Kulkarni, Assistant Manager of the 2nd Plaintiff. The said affidavit is marked X for identification and is taken on record. Alongwith the affidavit, the plaintiffs have tendered the

original documents along with a list. The original documents along with the list are marked Y (colly) for identification and the same are taken on record.

2. The 1st plaintiff is a registered firm and 2nd plaintiff is an insurance company. The defendants are shipping company having Management, Control Possession, coverage of m.v "Mantis" and carrying on the business of carriers of goods by sea for consideration. The defendants are carrying on business in Mumbai through their agents M/s Galaxy Multimodel Systems Pvt.Ltd. According to the case of the plaintiffs, the shippers M/s Sineximco Pte Ltd having their office at Singapore sold to the 1st plaintiff certain goods for total sum of US $ 234,987.37. The defendant issued their bill of lading evidencing that the consignment was shipped in a sound condition for its safe and timely delivery at Mumbai port. Invoice dated 21st January, 1997 was presented by the shipper to the 1st plaintiff through State Bank of Mysore, Nayabazar, Delhi-6. The 1st plaintiff paid the amount under the said invoice and the bill of lading and thus obtained title to the consignment.

3. The goods were entrusted to the defendants as owners and/or charterers of "Mantis" m.v. for its carriage. The Bill of lading shows that 16181 bags of toor whole were shipped to the plaintiffs in

sound condition for timely delivery at Mumbai Port. The consignment arrived at Mumbai Port. The clearing agents of the 1st plaintiff while taking delivery of the said consignment found that 4378 bags were landed in torn and slack condition and were mixed with dirt and other foreign matter. Accordingly, the Port Trust Authorities issued Remark List Certificate dated 5th April, 1997 to the clearing agents of the 1st plaintiffs stating that out of 16181 bags of toor whole, 4378 bags were landed in torn and slack condition. At the request of the 1st plaintiffs through their clearing agents. a joint survey of the torn and slack condition of the bags and refiling was carried out by M/s Cargo Control Services Corporation, Mumbai on behalf of the defendants. The said surveyors submitted a report dated 4th April, 1997 and confirmed the shortage/damage in 2552 bags of toor whole.

4. The 1st plaintiff lodged a claim on 15th April, 1997 with the defendant's agents in Mumbai claiming a sum of Rs.5,18,677.50 being the loss suffered by the 1st plaintiff. The 1st plaintiff had insured the aforesaid consignment with the 2nd plaintiff against transit risk from the port of loading to Mumbai and accordingly a policy of insurance was issued by the 2nd plaintiff on 20th January, 1997.

5. The 1st plaintiff lodged its claim in the sum

of Rs.4,00,341/- to the 2nd plaintiff and the said claim amount has been duly paid by the 2nd plaintiff to the 1st plaintiff. On 17th June, 1997 the 1st plaintiff executed in favour of the 2nd plaintiff a letter of subrogation and a special power of attorney authorising the 2nd plaintiff to recover from the defendants loss suffered by the 1st plaintiff.

6. The original documents namely invoice dated 21st January, 1997 Bill of Lading dated 21st January 1997, remark list certificate dated 5th April, 1997 issued by Mumbai Port Trust, survey report dated 4th April, 1998, letter dated 15th April, 1997 by the 1st plaintiff lodging its claim with the defendant's agent in Mumbai, the letter of subrogation dated 17th June, 1997 executed by the 1st plaintff in favour of the 2nd plaintiff and a special power of attorney dated 17th June, 1997 executed by the 1st plaintiff in favour of the 2nd plaintiff have been duly proved by the evidence of Ms.Maithili Kulkarni. The claim in the suit is also duly proved by the said affidavit. There is no written statement filed by the defendants. In view of the evidence led by the plaintiffs, a case is made out for passing a decree in favour of the plaintiff. However, further interest will have to be granted at 12 % p.a.

7. Hence, the suit is decreed in terms of prayer

clauses (a) and (b) with modification that further interest will be at the rate of 12 % p.a. from the date of filing of the suit till realisation/payment of the decretal amount.

8. The plaintiff will be entitled to refund of court fees if any as per rules.

Certified copy is expedited.

(A.S.Oka, J)